

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 5, 2013 appellant, then a 48-year-old program analyst, filed a traumatic injury claim (Form CA-1) alleging that on August 1, 2013 she slipped and fell down a museum stairway while in the performance of duty. She stopped work on the date of injury. OWCP accepted the claim for right ankle sprain. It paid appellant wage-loss compensation on the supplemental rolls commencing October 7, 2013. She returned to work on December 6, 2013. Appellant stopped work again on March 10, 2014 and began receiving Office of Personnel Management (OPM) disability retirement benefits effective March 20, 2014.

On May 23, 2018 OWCP accepted appellant's claim for a recurrence of medical treatment for additional accepted conditions of aggravation of arthritis of the right great toe, ankle/foot and contusion of the toe (resolved). On June 14, 2018 it granted her a schedule award for seven percent permanent impairment of the right lower extremity which ran for 20.16 weeks during the period April 27 to September 15, 2018.

On January 25, 2021 appellant filed a notice of recurrence (Form CA-2a) requesting medical treatment only. She noted that June 9, 2020, was the date of first medical treatment following the recurrence. With regard to her ability to work following the initial injury, appellant noted that she had retired in March 2014. She explained that she had shooting pain in her great toe since the 2013 accident. Appellant noted that she had follow-up care in 2018, and that the 2020 COVID-19 pandemic delayed her further evaluation and treatment. She explained that she had a June 2020 consultation with her treating physician Dr. Steven Pondek, a Board-certified family practitioner, during which she related that she had horrible buckling of the left knee. Dr. Pondek ordered an x-ray and magnetic resonance imaging (MRI) scans. Appellant related that, during her June 24, 2020, appointment, he diagnosed a meniscus tear of the left knee and recommended a total knee replacement on the left.

Appellant provided a copy of letter dated June 26, 2020 addressed to OWCP, wherein she requested that she have her left knee meniscus tear added as a consequential injury to her accepted lower right foot and great toe injuries. She explained that since the accident in August 2013, she had been placing the bulk of her weight on her left leg due to the constant shooting pain in her right great toe and foot, which caused her left lower body and left knee to weaken, causing chronic pain. Appellant noted that the physician who provided a 2018 permanent impairment rating for her schedule award noted her limp, which she had since her fall in 2013. She also indicated that, if her condition was accepted as a consequential injury, she would like to be considered for an additional schedule award.

In a development letter dated February 16, 2021, OWCP requested additional rationalized medical opinion evidence establishing a causal relationship between appellant's current condition and her accepted employment injury. It provided her with a questionnaire for her completion and afforded her 30 days to respond.

In a report dated January 26, 2021, Dr. Nicholas Diamond, an osteopath Board-certified in pain management, noted appellant's history of injury on August 1, 2013, and subsequent treatment. He related that an August 15, 2013 MRI scan revealed a bone edema and degenerative changes of the first phalanx of the great toe at the metatarsophalangeal joint. Dr. Diamond noted that a

March 15, 2019 computerized tomography scan revealed degenerative changes of the first metatarsophalangeal joint. He related that on March 13, 2018 appellant was diagnosed with a medial plantar plate injury, and a March 14, 2018 MRI scan revealed nonunion avulsion fracture of the proximal phalanx and first toe edema, arthritic changes, bursitis, joint fluid in the second through fifth metatarsophalangeal joints, and possible hammertoe. Dr. Diamond noted that she was diagnosed with post-traumatic osteoarthritis and nonunion fracture of the proximal phalanx of the right foot. He also noted that appellant was initially diagnosed with a right ankle sprain and that appellant placed the bulk of weight on her left knee. Dr. Diamond related that a June 19, 2020 MRI scan of the left knee revealed a complex radial meniscus tear in the medial portion of the posterior horn of the medial meniscus, an effusion, and osteoarthritis of the medial femoral/tibial compartments as well as plica. He noted that appellant had undergone an August 10, 2020 left total knee arthroplasty and additional surgery on October 9, 2020 for manipulation under anesthesia of the left knee. Dr. Diamond diagnosed post-traumatic right ankle strain and sprain, post-traumatic right foot strain and sprain, first phalanx great toe contusion with osseous reaction and bone edema, per the August 15, 2013 MRI scan, status post avulsion fracture of the proximal phalanx of the right great toe with nonunion, per the March 14, 2018 MRI scan, chronic post-traumatic first metatarsophalangeal joint capsulitis to the right foot, gait dysfunction secondary to right great toe injury with nonunion, consequential injury to the left knee secondary to right foot gait dysfunction with medial meniscus tear, per the June 2020 MRI scan, degenerative joint disease and osteoarthritis of the medial femoral and tibial compartments, and plica of the left knee, per the June 19, 2020 MRI scan, status post left total knee arthroplasty on August 10, 2020, postoperative left knee arthrofibrosis, and status post left knee manipulation under anesthesia on October 9, 2020. He opined that the work-related injury of August 1, 2013, was the “competent producing factor for [appellant’s] subjective and objective findings of today.”

In a February 17, 2021 response to OWCP’s development questionnaire, appellant indicated that because of her right foot injuries from 2013, she placed the bulk of her weight on her left leg, and sustained new injuries were a result of shifting her weight to the left knee.

By decision dated May 5, 2021, OWCP denied appellant’s recurrence claim, finding that she had not established that she required additional medical treatment due to a worsening of her accepted work-related conditions.

On May 5, 2021 appellant requested reconsideration. She noted that her claim was for a consequential injury, requiring a total left knee replacement. Appellant also related that Dr. Diamond had provided an opinion that the osteoarthritis in her right toe/foot caused the right foot pain resulting in left total knee replacement.

OWCP received a copy of Dr. Diamond’s January 26, 2021 report, which contained a handwritten annotation noting “corrected copy [May 5 2021].”

In a June 20, 2021 letter, appellant noted that she had provided timely evidence and that she had requested that Dr. Diamond provide an additional rebuttal to the denial of her claim. She again summarized that OWCP had accepted osteoarthritis of the right great toe and foot/ankle in 2018, after the second opinion physician noted her limp. Appellant alleged that she placed the bulk of her weight on the left leg, which resulted her need for a total left knee replacement in August 2020.

By decision dated July 14, 2021, OWCP denied reconsideration of the merits of appellant's claim under 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

A recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.² An employee has the burden of proof to establish that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury without intervening cause.³

If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting a causal relationship between the employee's current condition and the original injury in order to meet his or her burden.⁴ To meet this burden, the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports his or her conclusion with sound medical rationale.⁵ Where no such rationale is present, medical evidence is of diminished probative value.⁶

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to a claimant's own intentional misconduct.⁷ The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.⁸ With respect to consequential injuries, the Board has held that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation, to arise out of and in the course of employment and is compensable.⁹

² 20 C.F.R. § 10.5(y).

³ See *S.P.*, Docket No. 19-0573 (issued May 6, 2021); *M.P.*, Docket No. 19-0161 (issued August 16, 2019); *E.R.*, Docket No. 18-0202 (issued June 5, 2018).

⁴ Federal (FECA) Procedural Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4b (June 2013); see also *J.M.*, Docket No. 09-2041 (issued May 6, 2010).

⁵ *A.C.*, Docket No. 17-0521 (issued April 24, 2018); *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

⁶ *M.P.*, *supra* note 3; *Michael Stockert*, 39 ECAB 1186 (1988).

⁷ *C.W.*, Docket No. 18-1536 (issued June 24, 2019); *C.R.*, Docket No. 18-1285 (issued February 12, 2019); *Albert F. Ranieri*, 55 ECAB 598 (2004); *Clement Jay After Buffalo*, 45 ECAB 707 (1994).

⁸ *R.M.*, Docket No. 18-1621 (issued August 23, 2019); *Debra L. Dilworth*, 57 ECAB 516 (2006).

⁹ *K.C.*, Docket No. 19-1251 (issued January 24, 2020); *R.V.*, Docket No. 18-0552 (issued November 5, 2018); *L.S.*, Docket No. 08-1270 (issued July 2, 2009).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a recurrence of medical treatment causally related to her accepted August 1, 2013 employment injury.

Appellant has requested treatment for left knee meniscus tear and osteoarthritis conditions, which she alleges developed as a consequence of her accepted right foot injuries and subsequent right limp. In a January 26, 2021 report, Dr. Diamond opined that the work-related injury of August 1, 2013 was the “competent producing factor for [appellant’s] subjective and objective findings of today.” However, he did not relate bridging evidence regarding her left knee condition between August 1, 2013 and February 26, 2018, sufficient to establish that her left knee condition developed as a result of her August 1, 2013 accepted conditions, and required additional medical treatment.¹⁰ Dr. Diamond related that appellant had gait dysfunction secondary to right great toe injury with nonunion and consequential injury to the left knee secondary to right foot gait dysfunction. He diagnosed left knee medial meniscus tear degenerative joint disease and osteoarthritis of the left knee and postsurgery arthrofibrosis, however, he failed to explain with rationale how her accepted right foot conditions would have physiologically caused or aggravated the diagnosed left knee conditions. The Board has held that a medical opinion should offer a medically-sound and rationalized explanation by the physician of how the accepted employment injury physiologically caused the diagnosed conditions.¹¹ Given this deficiency of bridging medical evidence and lack of rationale, the Board finds that Dr. Diamond’s report is of diminished probative value and insufficient to establish the claim.

As the medical evidence of record does not contain a rationalized medical opinion establishing that appellant required medical treatment causally related to her August 1, 2013 employment injury, the Board finds that she has not met her burden of proof to establish her recurrence claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.¹²

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by

¹⁰ See *L.A.*, Docket No. 18-1570 (issued May 23, 2019).

¹¹ See *B.R.*, Docket No. 21-1109 (issued December 28, 2021).

¹² 20 C.F.R. § 10.606(b)(3); see *L.G.*, Docket No. 21-0689 (issued October 25, 2021); see also *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹³

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁴ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁵ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

In support of her May 5, 2021 request for reconsideration, appellant argued that her claim was for a consequential injury which resulted in a total left knee replacement. She asserted that Dr. Diamond had opined that the osteoarthritis in her right toe/foot caused a right limp and resulted in her left total knee replacement. Appellant argued that OWCP expanded acceptance of her claim to include osteoarthritis of the right great toe and foot/ankle in 2018, and that the second opinion physician had noted her right limp. The Board finds, however, that the cause of her left knee condition is a medical issue which must be addressed by relevant medical evidence.¹⁷ These arguments did not show that OWCP erroneously applied or interpreted a specific point of law, and did not advance a relevant legal argument not previously considered by OWCP. It therefore properly determined that appellant's request did not warrant a review of the merits of the claim based on the first and second requirements of section 10.606(b)(3).¹⁸

In support of her reconsideration request, appellant submitted a copy of Dr. Diamond's January 26, 2021 report. The Board notes that this evidence is duplicative of evidence previously considered by OWCP. Evidence which repeats or duplicates evidence already of record has no evidentiary value and does not constitute a basis for reopening a case.¹⁹ Appellant did not provide

¹³ 20 C.F.R. § 10.606(b)(3).

¹⁴ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of the merit decision for which review is sought. *Supra* note 4 at Chapter 2.1602.4 (February 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

¹⁵ *Id.* at § 10.608(a).

¹⁶ *Id.* at § 10.608(b).

¹⁷ *A.D.*, Docket No. 18-0497 (issued July 25, 2018).

¹⁸ *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *see S.M.*, Docket No. 17-1899 (issued August 3, 2018).

¹⁹ *R.B.*, Docket No. 21-0035 (issued May 13, 2021); *V.L.*, Docket No. 19-0069 (issued February 10, 2020); *A.K.*, Docket No. 19-1210 (issued November 20, 2019); *R.S.*, Docket No. 19-0312 (issued June 18, 2019); *Richard Yadron*, 57 ECAB 207 (2005); *Eugene F. Butler*, 36 ECAB 36 ECAB 393, 398 (1984).

relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).²⁰ Therefore, OWCP properly determined that her request did not warrant a review of the merits of the claim based on the third requirement of section 10.606(b)(3).

As appellant has not met any of the regulatory requirements under 20 C.F.R. § 10.606(b)(3), pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of medical treatment causally related to her August 1, 2013 accepted employment injury. The Board also finds that OWCP properly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the May 5 and July 14, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 18, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²⁰ See *T.W.*, Docket No. 18-0821 (issued January 13, 2020).